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13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16

17 RICHARD W. TRAMMELL,
18 Plaintiff,
19 v.
20 BARBARA'S BAKERY, INC., *et al.*,
21 Defendants.
22

Case No. 3:12-cv-02664-CRB

SETTLEMENT AGREEMENT

Honorable Charles R. Breyer, Presiding

Complaint Filed: May 23, 2012

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1 **IT IS HEREBY STIPULATED AND AGREED**, by, between and among Plaintiff Richard
2 Trammell (“Plaintiff”) and Defendant Barbara’s Bakery, Inc. (“Defendant” or “Barbara’s Bakery”),
3 with all terms as defined below, through their duly-authorized counsel, that the above-captioned
4 action, *Trammell v. Barbara’s Bakery, Inc.*, No. 3:12-cv-02664 (N.D. Cal.), and the matters raised
5 therein, are settled and judgment shall be entered on the terms and conditions set forth in this
6 Settlement Agreement and the release set forth herein, subject to the approval of the Court.

7 **I. INTRODUCTION**

8 A. Plaintiff’s national class action complaint (including subsequent amendments thereto)
9 in the instant case, entitled *Trammell v. Barbara’s Bakery, Inc.*, No. 3:12-cv-02664, and initially filed
10 on May 23, 2012, in the United States District Court for the Northern District of California (the
11 “Action”), alleges, *inter alia*, that Barbara’s Bakery manufactured, marketed, and sold various food,
12 cereals, and snack products (collectively, the “Eligible Products”). The Action alleges that through a
13 nationwide advertising campaign, Barbara’s Bakery sold its products by advertising that they were
14 “All Natural.” Plaintiff challenged these advertisements, asserting, *inter alia*, that Defendant’s
15 products are not “All Natural” in that they contain ingredients that are synthetic, and/or artificial,
16 and/or ingredients containing and/or derived from Genetically Modified Organisms (“GMO”).
17 Plaintiff alleged that Barbara’s Bakery violated the California Unfair Competition Law, Bus. & Prof.
18 Code §17200, *et seq.* (“UCL”), False Advertising Law, Bus & Prof. Code §17500, *et seq.* (“FAL”),
19 Consumer Legal Remedies Act, Civil Code § 1750, *et seq.* (“CLRA”) and constituted a breach of an
20 express warranty.

21 B. Plaintiff, as settlement class representative, believes that the claims settled herein have
22 merit. However, Plaintiff and Class Counsel recognize and acknowledge the expense and length of
23 continued proceedings necessary to prosecute the claims through trial, appeal, and ancillary actions.
24 They have also taken into account the uncertain outcome and the risk of any litigation, as well as the
25 difficulties and delay inherent in such litigation. They believe that the settlement set forth in this
26 Agreement confers substantial benefits upon the Class Members. Based upon their evaluation, they
27 have determined that the settlement set forth in this Agreement is fair, reasonable and adequate and in
28 the best interest of the settlement class.

1 C. Defendant has denied and continues to deny all liability with respect to any and all of
2 the claims alleged in the Action or the facts alleged in support thereof and has denied and continues to
3 deny all charges of wrongdoing or liability against it arising out of or relating to any conduct, acts, or
4 omissions alleged in the Action. Defendant's willingness to resolve the Action on the terms and
5 conditions embodied in this Agreement is based on, *inter alia*: (i) the time and expense associated with
6 litigating this Action through trial and any appeals; (ii) the benefits of resolving the Action, including
7 limiting further expense, inconvenience, and distraction, disposing of burdensome litigation, and
8 permitting Defendant to conduct its business unhampered by the distractions of continued litigation;
9 and (iii) the uncertainty and risk inherent in any litigation.

10 D. Before entering into this Agreement, Class Counsel conducted an extensive and
11 thorough examination, investigation, and evaluation of the relevant law, facts and allegations to assess
12 the merits of the claims and potential claims to determine the strength of both defenses and liability
13 sought in the Action.

14 E. Class Counsel obtained extensive class discovery, including voluminous documents
15 and electronic information. Plaintiff, through Class Counsel, thoroughly reviewed the documents
16 obtained, the materials available electronically, and conducted detailed interviews of witnesses. In
17 particular, Plaintiff obtained discovery, regarding the Eligible Products in the following categories:
18 (i) label design and product formulation; (ii) marketing, advertising, media, and public relations; and
19 (iii) financial information. In total, Plaintiff obtained over thirty (30) banker's boxes of documents
20 and approximately seventy (70) Gigabytes (GB) of data through discovery. In addition, Class Counsel
21 conducted interviews of primary Barbara's Bakery's corporate witnesses who have been involved with
22 the Eligible Products to address the following subjects: (i) sales and marketing; (ii) labeling; (iii)
23 finance; (iv) document collection and retention; and (v) Barbara's Bakery's efforts to eliminate GMO
24 ingredients from its products.

25 F. This Agreement is the product of extensive, arms-length, and vigorously-contested
26 settlement discussions. After numerous settlement discussions between counsel, the Parties engaged
27 in two (2) mediation sessions with the Honorable Eugene F. Lynch (Ret.) of JAMS, and continued
28 lengthy and months long negotiations thereafter. Before and during settlement discussions, the Parties

1 had an arm's length exchange of sufficient information to permit Plaintiff and Class Counsel to
2 evaluate the claims and potential defenses and to meaningfully conduct informed settlement
3 discussions.

4 G. Based upon their review, investigation, and evaluation of the facts and law relating to
5 the matters alleged in the pleadings, Plaintiff and Class Counsel, on behalf of Plaintiff and the other
6 members of the proposed Class, have agreed to settle the Action pursuant to the provisions of this
7 Agreement, after considering, among other things: (1) the substantial benefits to the Class Members
8 under the terms of this Agreement; (2) the risks, costs and uncertainty of protracted litigation,
9 especially in complex actions such as this, as well as the difficulties and delays inherent in such
10 litigation; and (3) the desirability of consummating this Agreement promptly in order to provide
11 effective relief to the Class Members.

12 H. Barbara's Bakery has vigorously denied and continues to dispute all of the claims and
13 contentions alleged in the Action. Barbara's Bakery expressly denies any and all wrongdoing alleged
14 in the pleadings and does not admit or concede any actual or potential fault, wrongdoing, liability, or
15 damage of any kind to Plaintiff and the putative class or in connection with any facts or claims that
16 have been or could have been alleged against it in the Action. Barbara's Bakery further denies that it
17 acted improperly or wrongfully in any way, and believes that the Action has no merit. Even though
18 Barbara's Bakery expressly denies any wrongdoing, Barbara's Bakery considers it desirable for these
19 cases to be settled and dismissed, because this Settlement will finally put Plaintiff's claims and the
20 underlying matters to rest and will avoid the substantial expense, burden, and uncertainty associated
21 with the continued litigation of these claims.

22 I. Barbara's Bakery has agreed to class action treatment of the claims alleged in the
23 Action solely for the purpose of compromising and settling those claims on a class basis as set forth
24 herein;

25 J. This Agreement, any negotiations, proceedings, or documents related to the Agreement,
26 its implementation, or its judicial approval (as well as the fact of this Agreement and any acts or
27 documents related to the Agreement or its implementation) cannot be asserted or used by any person
28 to support a contention that class certification is proper or improper or that liability does or does not

1 exist, or for any other reason, in the above-captioned action or in any other proceedings; provided,
 2 however, that Class Members, Class Counsel, Defendant, other related persons, and any person who is
 3 a beneficiary or a release set forth herein, may reference and file this Agreement, and any resulting
 4 Order or Judgment, with the Court, or any other tribunal or proceeding, in connection with the
 5 implementation or enforcement of its terms (including but not limited to the releases granted therein,
 6 or any dispute related thereto). Nothing in this Agreement, nor in any court order approving this
 7 Agreement, shall be construed as a criticism or an endorsement of the Eligible Products.

8 NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and between the Parties,
 9 through their respective counsel, that: (a) the Action be fully and finally compromised, settled and
 10 released upon final settlement approval by the Court after the hearings as provided for in this
 11 Agreement; and (b) upon such approval by the Court, a Final Order and Final Judgment, substantially
 12 in the form attached hereto as Exhibits “3” and “4,” respectively, be entered dismissing the Action
 13 with prejudice upon the following terms and conditions of this Agreement.

14 **II. DEFINITIONS**

15 A. As used in this Agreement and the attached exhibits (which are an integral part of this
 16 Agreement and are incorporated in their entirety by reference), the following terms have the following
 17 meanings, unless this Agreement specifically provides otherwise:

18 1. “Action” means the lawsuit entitled *Trammell v. Barbara’s Bakery, Inc.*, No.
 19 3:12-cv-02664 (N.D. Cal.).

20 2. “Agreement” or “Settlement” means this Settlement Agreement and its exhibits,
 21 attached hereto or incorporated herein, including any subsequent amendments agreed to by the Parties
 22 and any exhibits to such amendments.

23 3. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the
 24 Court to Class Counsel from Defendant to compensate Plaintiff’s Counsel for their fees and expenses
 25 in connection with the Action and the Settlement, as described in Section IX of this Agreement.

26 4. “Barbara’s Bakery” means Defendant, Barbara’s Bakery, Inc.

27 5. “Barbara’s Bakery’s Counsel” or “Defendant’s Counsel” means Glynn &
 28 Finley, LLP.

1 6. “Claim” means the claim of a Class Member or his or her representative
2 submitted on a Claim Form as provided in this Agreement.

3 7. “Claimant” means a Class Member who has submitted a Claim.

4 8. “Claim Form” means the document, in substantially the same form attached as
5 Exhibit 1 to this Agreement.

6 9. “Claim Period” means the time period in which Class Members may submit a
7 Claim Form for review to the Settlement Administrator. The Claim Period shall run for one hundred
8 eighty (180) calendar days from the date of the first dissemination of the Summary Settlement Notice
9 or Class Notice, whichever is earlier.

10 10. “Claim Process” means that process for submitting Claims described in this
11 Agreement.

12 11. “Class” means all persons who, during the Class Period, purchased in the
13 United States any of the Eligible Products. Excluded from the Class are: (a) Barbara’s Bakery’s board
14 members or executive-level officers, including its attorneys; (b) persons who purchased the Eligible
15 Products primarily for the purpose of resale; (c) retailers or re-sellers of the Eligible Products; (d)
16 governmental entities; (e) persons who timely and properly exclude themselves from the Class as
17 provided in the Agreement; (f) persons who purchased the Eligible Products via the Internet or other
18 remote means while not residing in the United States; and (g) the Court, the Court’s immediate family,
19 and Court staff.

20 12. “Class Member” means a member of the Class.

21 13. “Class Counsel” means: Robert Ahdoot and Tina Wolfson of Ahdoot &
22 Wolfson, PC.

23 14. “Class Notice” means a notice substantially in the form attached as Exhibit 2 to
24 this Agreement.

25 15. “Class Period” means the period from May 23, 2008, up to and including the
26 date of the first dissemination of the Summary Settlement Notice or Class Notice, whichever is earlier.

27 16. “Court” means the United States District Court for the Northern District of
28 California.

17. “Eligible Products” or “Eligible Product” means any of the following Barbara’s Bakery products, of any size, purchased by Class Members during the Class Period:

a. **Cereals:**

- i. BROWN RICE CRISPS (Fruit Juice Sweetened flavor);
- ii. CORN FLAKES (Fruit Juice Sweetened flavor);
- iii. HIGH FIBER (Cranberry, Flax & Granola, or Original flavors);
- iv. HOLE ‘N OATS (Fruit Juice Sweetened or Honey Nut flavors);
- v. HONEST O’S (Honey Nut, Multigrain, or Original flavors);
- vi. ORGANIC APPLE CINNAMON O’S;
- vii. ORGANIC BREAKFAST O’S;
- viii. ORGANIC BROWN RICE;
- ix. ORGANIC BROWN RICE CRISPS;
- x. ORGANIC CORN FLAKES;
- xi. ORGANIC CRISPY WHEATS;
- xii. ORGANIC HONEY CRUNCH ‘N OATS;
- xiii. ORGANIC HONEY NUT O’S;
- xiv. ORGANIC SNACKIMALS CEREAL (Cinnamon Crunch or Vanilla Blast flavors);
- xv. ORGANIC WILD PUFFS (Caramel, Cocoa, Cocoa Grahams, Fruity Punch, Honey Puffs, or Original flavors);
- xvi. PUFFINS (Cinnamon, Crunchy Cocoa, Fruit Medley, Honey Rice, Multigrain, Peanut Butter, Peanut Butter & Chocolate, or Original flavors);
- xvii. PUFFIN PUFFS (Crunchy Cocoa or Fruit Medley flavors);
- xviii. SHREDDED OATS (Cinnamon Crunch, Blueberry Burst, Multigrain, Original, Shredded Wheat, or Vanilla Almond flavors);
- xix. SHREDDED WHEAT;
- xx. SHREDDED SPOONFULS (Multigrain or Vanilla Blast flavors);
- xxi. SHREDDED MINIS (Blueberry Burst flavor);

xxii. TOASTED OATMEAL FLAKES (Original flavor); and
 xxiii. ULTIMA ORGANIC (Blue Corn, Blueberry, Flax & Granola, High Fiber, or Pomegranate flavors).

b. **Cereal Bars:**

i. MULTIGRAIN CEREAL BARS (Apple Cinnamon, Blueberry, Cherry, Original, Raspberry, Strawberry, or Triple Berry flavors);
 ii. FRUIT & YOGURT BARS (Apple Cinnamon, Blueberry Apple, Cherry Apple, Strawberry Apple, or Traditional flavors);
 iii. PUFFINS CEREAL AND MILK BARS (Blueberry Yogurt, French Toast, Peanut Butter Chocolate Chip, or Strawberry Yogurt flavors).

c. **Cheese Puffs:**

i. BAKED CHEESE PUFFS (Original or White Cheddar flavors); and
 ii. CHEESE PUFFS (Jalapeno or Original flavors).

d. **Fig Bars:**

i. FIG BARS (Apple Cinnamon, Blueberry, Multigrain, Raspberry, Traditional, Wheat Free or Whole Wheat flavors).

e. **Granola Bars:**

i. CRUNCHY ORGANIC GRANOLA BARS (Cinnamon Crisp, Oat & Honey, Peanut Butter, or Toasted Almond flavors).

f. **Snackimals Animal Cookies:**

i. SNACKIMALS ANIMAL COOKIES (Chocolate Chip, Double Chocolate, Peanut Butter, Oatmeal, Vanilla, or Snickerdoodle flavors).

g. **Organic Mini-Cookies:**

i. ORGANIC MINI COOKIES (Chocolate, Ginger, or Oatmeal flavors).

h. **Snack Mixes:**

i. BRUSCHETTA SNACK MIX;
 ii. HONEY CINNAMON SNACK MIX;

iii. HONEY MUSTARD SNACK MIX; and

iv. SALSA SNACK MIX.

i. **Crackers:**

i. CRISP COOKIES (Chocolate Chip, Double Dutch Chocolate Chip, Old Fashioned Oatmeal, or Traditional Short Bread flavors);

ii. GO GO GRAHAMS (Chocolate, Cinnamon, Honey, or Lemon Ginger flavors);

iii. PIZZA AND CHEESE BITES;

iv. RITE LITE ROUNDS (Original, Poppy Seed, or Tamari Sesame flavors); and

v. WHEATINES (Cracked Pepper, Original or Sesame flavors).

18. “Fairness Hearing” means the hearing at or after which the Court shall make a final decision whether to approve this Agreement as fair, reasonable, and adequate. The Parties shall request that the Court schedule the Fairness Hearing for a date that is in compliance with the provisions of 28 U.S.C. §1715(d), but no later than one hundred eighty-five (185) calendar days, after entry of Preliminary Approval Order.

19. “Final Order and Final Judgment” means the Court’s order approving the Settlement and this Agreement, as described in Section X of this Agreement, which is to be substantially in the forms attached as Exhibits 3 and 4, respectively, to this Agreement.

20. “Final Settlement Date” means the date on which the Final Order and Final Judgment approving this Agreement becomes final. For purposes of this Agreement:

a. if no appeal has been taken from the Final Order and Judgment, “Final Settlement Date” means the date on which the time to appeal therefrom has expired; or

b. if any appeal has been taken from the Final Order and Final Judgment, “Final Settlement Date” means the date on which all appeals therefrom, including petitions for rehearing or re-argument, petitions for rehearing en banc and petitions for certiorari or any other form of review, have been finally disposed of in a manner that affirms the Final Order and Judgment; or

c. if the Class Counsel and Defendant agree in writing, “Final Settlement

1 Date” can occur on any other agreed date.

2 21. “Notice Administrator” means the Court-appointed third-party agent or
3 administrator agreed to by the Parties and appointed by the Court. The Parties agree that Kinsella
4 Media, LLC shall be retained to design, consult on, and implement the notice and related requirements
5 of this Agreement.

6 22. “Parties” means Plaintiff and Barbara’s Bakery, collectively, as each of those
7 terms is defined in this Agreement.

8 23. “Plaintiff” means Richard W. Trammell.

9 24. “Plaintiff’s Counsel” means counsel for the Plaintiff in the Action, who are:
10 Ahdoot & Wolfson, PC.

11 25. “Preliminary Approval Order” means the order to be entered by the Court
12 preliminarily approving the Settlement as outlined in Section X of this Agreement and should be
13 substantially in the form attached as Exhibit 5 to this Agreement.

14 26. “Release” means the release and waiver set forth in Section VIII of this
15 Agreement and in the Final Order and Final Judgment.

16 27. “Released Parties” means Barbara’s Bakery, its past and present officers,
17 directors, employees, stockholders, agents, attorneys, administrators, parent (The Weetabix Company,
18 Inc. and Weetabix Limited), successors, subsidiaries, suppliers, distributors, assigns, affiliates, joint-
19 ventures, partners, members, divisions, predecessors, authorized retailers, resellers, and wholesalers of
20 Eligible Products for resale.

21 28. “Settlement Administrator” means the third-party agent or administrator agreed
22 to by the Parties and appointed by the Court. The Parties agree that Rust Consulting, Inc. shall be
23 retained to implement the mailed notice, the website, claim review and related requirements of this
24 Agreement, subject to the Court’s approval.

25 29. “Settlement Claim Procedures and Claim Calculation Protocol” means the
26 protocol attached hereto as Exhibit 7.

27 30. “Settlement Fund” means the Four Million Dollars (\$4,000,000.00) that
28 Barbara’s Bakery will pay or cause to be paid, pursuant to the terms of Section IV.A of this

1 Agreement.

2 31. "Settlement Fund Balance" means the balance remaining in the Settlement Fund
3 after payment of (i) all costs of notice and administration (including the Initial Deposit and Period
4 Payments as defined in Section IV.A.1 herein), (ii) the Incentive Award (as defined in Section IX.F
5 herein) to the representative Plaintiff, and (iii) the Attorneys' Fees and Expenses.

6 32. "Summary Settlement Notice" means the Summary Class Notice to be
7 disseminated by publication substantially in the form of Exhibit 6 attached to this Agreement.

8 33. "Synthetic Ingredients" means an ingredient that is formulated or manufactured
9 by a chemical (or biochemical) process or by a process that chemically changes a substance extracted
10 from naturally occurring plant, animal, or mineral sources, including but not limited to the following:
11 allegedly synthetic ingredients identified in Plaintiff's Second Amended Complaint, Annatto, Ascorbic
12 Acid, Calcium Carbonate, Ferric Orthophosphate, Fructooligosaccharides, Nutra Flora, Retinyl
13 Palmitate, Tocopherols, Vitamin D3 and "Dehydrated Cane Juice."

14 B. Other capitalized terms used in this Agreement but not defined in this Section II shall
15 have the meanings ascribed to them elsewhere in this Agreement.

16 C. The terms "he or she" and "his or her" include "it" or "its" where applicable.

17 **III. CERTIFICATION OF THE SETTLEMENT CLASS**

18 Barbara's Bakery, while continuing to deny that the Action meets the requisites for class
19 certification under Fed. R. Civ. P. 23 for any purpose other than settlement, consents, solely for
20 purposes and in consideration of the Settlement, to the certification of the settlement Class, to the
21 appointment of Class Counsel, and to the conditional approval of Plaintiff as a suitable representative
22 of the Class. The certification of the settlement Class, the appointment of Plaintiff as the class
23 representative, and the appointment of Plaintiff's Counsel to act as Class Counsel, shall be binding
24 only with respect to this Settlement and this Agreement. If the Court fails to approve this Agreement
25 and the Settlement proposed herein for any reason, or if this Agreement and the Settlement proposed
26 herein is terminated, cancelled, or fails to become effective for any reason whatsoever, this class
27 certification, to which the Parties have stipulated solely for the purposes and in consideration of the
28 Settlement of this Action, this Agreement, and all the provisions of the Preliminary Approval Order,

shall be vacated by their own terms, and the litigation of the Action shall revert to its status with respect to class certification as it existed prior to the date of this Agreement. In that event, Barbara's Bakery shall retain all rights it had immediately preceding the execution of this Agreement to object to the maintenance of the Action as a class action, and in that event, nothing in this Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any party concerning whether the Action may properly be maintained as a class action under applicable law.

IV. SETTLEMENT CONSIDERATION

Settlement relief shall consist of three components: (1) refunds to Class Members who submit valid Claims; (2) Defendant's agreement to change its labeling and advertising to omit the terms "all natural," "no artificial additives," "no artificial preservatives," and "no artificial flavors;" and (3) certain conduct changes implemented by Barbara's Bakery relating to the use of ingredients that contain GMO in certain Barbara's Bakery's products.

A. Settlement Fund:

1. Barbara's Bakery agrees to pay or cause to be paid the sum of Four Million Dollars and No Cents (\$4,000,000.00) as follows:

a. Initial Deposit: Within five (5) calendar days after the entry of the Preliminary Approval Order, the sum of Two Hundred and Fifty Thousand Dollars and No Cents (\$250,000.00) ("Initial Deposit") to the Settlement Administrator, for the initial notice and administration expenses that are likely to be incurred. This deadline may be extended by mutual consent of the Parties.

b. Periodic Payment(s): Within ten (10) calendar days after the submission of any reasonable invoice submitted by the Settlement Administrator and / or Notice Administrator, and approved by Class Counsel and Defense Counsel, the sum of said approved invoice to the Settlement Administrator or Notice Administrator, as applicable. ("Periodic Payment(s)").

c. First Fee Payment: Funding for the payment of the First Fee Payment (as this term is defined in Section IX.C) shall be made in accordance with Section IX of this Agreement. The deadline may be extended by mutual consent of the Parties.

d. Settlement Fund Balance Payment: Within ten (10) calendar days after the Final Settlement Date, Defendant shall pay or cause to be paid to the Class Action Class Administrator an amount equal to the Settlement Fund Balance to be used for the payment of Class Member Claims.

e. Final Fee Payment: Funding for the payment of the Final Fee Payment (as this term is defined in Section IX.E) shall be made in accordance with Section IX of this Agreement. The deadline may be extended by mutual consent of the Parties.

f. Incentive Award Payment: Funding for the payment of the Incentive Award (as this term is defined in Section IX.F) shall be made in accordance with Section IX of this Agreement. The deadline may be extended by mutual consent of the Parties.

2. Settlement Fund proceeds shall be used for the payment of: (a) the costs and expenses that are associated with disseminating the notice to the Class, including, but not limited to, the Class Notice and the Summary Settlement Notice; (b) the costs and expenses associated with the administration of the Settlement; (c) timely, valid, and approved Claims submitted by Class Members pursuant to the Claim Process; (d) the Residual Funds, if any, pursuant to Section IV.D.3 of this Agreement; (e) payment of the Attorneys Fees and Expenses; and (f) payment of the Incentive Award to the Plaintiff. Class Counsel must approve any payment of costs or expenses under subsections (a) and (b) of this paragraph. Approval and payment of Claims under subsection (c) of this paragraph shall be in accordance with the terms and conditions of this Agreement and the Settlement Claim Procedures and Claim Calculation Protocol. Payment of Attorneys Fees and Expenses under subsection (e) of this paragraph and the Incentive Award under subsection (f) of this paragraph shall be in accordance with Section IX of this Agreement and subject to Court approval.

3. Barbara's Bakery shall not be liable for payment of any costs, expenses, or Claims authorized under this paragraph beyond its deposit or payment of the full amount of the Settlement Fund as provided in this Agreement. The Parties agree that the Settlement Fund and Barbara's Bakery payment of Four Million Dollars and No Cents (\$4,000,000.00) is the full extent of Barbara's Bakery cash payment obligation under this Agreement. This payment, pursuant to the terms and conditions of this Agreement, and any other non-monetary obligations of and considerations due

1 from Barbara's Bakery set forth in this Agreement, will be in full satisfaction of all individual and
2 class claims asserted in the Action.

3 B. Claim Form Submission, Review, and Administration of the Settlement:

4 1. Class Members may submit a Claim through the Claim Process during the
5 Claim Period and the Settlement Administrator shall review and process the Claim pursuant to this
6 Agreement and the Settlement Claim Procedures and Claim Calculation Protocol, which is attached as
7 Exhibit 7 to this agreement. As part of the Claim Process, Class Members shall be eligible for the
8 relief provided in this Agreement, provided Class Members complete and timely submit the Claim
9 Form, which shall be included with the Class Notice, to the Settlement Administrator within the Claim
10 Period, except as otherwise provided in this Agreement and the Settlement Claim Procedures and
11 Claim Calculation Protocol.

12 2. As further specified in the Settlement Claim Procedures and Claim Calculation
13 Protocol, the Claim Form shall advise Class Members that the Settlement Administrator has the right
14 to request verification of the purchase of Eligible Products, including, but not limited to,
15 documentation demonstrating purchase of any and all of the Eligible Products during the Class Period.
16 If the Class Member does not timely comply and/or is unable to produce documents to substantiate
17 and/or verify the information on the Claim Form and the Claim is otherwise not approved, the Claim
18 shall be disqualified.

19 3. Each Class Member shall submit a Claim Form stating to the best of their
20 knowledge the total amount of their purchases of the Eligible Products. The Claim Form shall be
21 signed under an affirmation, substantially in the following language: "I declare or affirm, under
22 penalty of perjury, that the information in this claim form is true and correct to the best of my
23 knowledge and that I purchased the amount of the Eligible Product(s) claimed above during the Claim
24 Period. I understand that my claim form may be subject to audit, verification and Court review."
25 Claim Forms will be: (a) included on the Settlement website to be designed and administered by the
26 Settlement Administrator; and (b) made readily available from the Settlement Administrator, as
27 provided in the Preliminary Approval Order. In the event a Class Member submits an otherwise valid
28 Claim Form, but fails to indicate the amount of his/her purchases of the Eligible Products during the

1 Class Period, as requested by the Claim Form, that Class Member will be entitled to the minimum
2 payment amount available to eligible Class Member pursuant to Section IV.C.1.

3 4. The Settlement Administrator shall provide periodic updates to Class Counsel
4 and to Barbara's Bakery regarding Claim Form submissions beginning within seven (7) business days
5 after the commencement of the dissemination of the Class Notice or the Summary Settlement Notice
6 and continuing on a monthly basis thereafter.

7 5. The Settlement Administrator shall begin to pay timely, valid, and approved
8 Claims commencing no later than one hundred and twenty (120) calendar days after the close of the
9 Claim Period so long as this period is after the Final Settlement Date, or sooner upon Barbara's
10 Bakery and Plaintiff's Counsel's joint direction, but not before the issuance of the Court's Final Order
11 and Final Judgment approving the Settlement. In the event the Final Settlement Date falls after the
12 close of the Claim Period, then the Settlement Administrator shall begin to pay timely, valid, and
13 approved Claims commencing no later than one hundred and twenty (120) calendar days after the
14 Final Settlement Date. The Settlement Administrator shall have completed the payment to Class
15 Members who have submitted timely, valid and approved Claims pursuant to the Claim Process no
16 later than one hundred sixty (160) calendar days after either the Final Settlement Date or the close of
17 the Claim Period, whichever is later.

18 C. Relief Available to Class Members

19 1. The relief to be provided to each eligible Class Member, who submits a Claim
20 Form pursuant to the terms and conditions of this Agreement, shall be determined as follows:

21 a. Class Members whose total purchases of any of the Eligible Products
22 during the Class Period amount to more than One Hundred Dollars (\$100), are entitled to a payment of
23 One Hundred Dollars (\$100) subject to the adjustments set forth in Section IV.D.

24 b. Class Members whose total purchases of any of the Eligible Products
25 during the Class Period amount to more than Seventy-Five Dollars (\$75), up to and including One
26 Hundred Dollars (\$100), are entitled to a payment of Seventy-Five Dollars (\$75) subject to the
27 adjustments set forth in Section IV.D.

28 c. Class Members whose total purchases of any of the Eligible Products

during the Class Period amount to more than Fifty Dollars (\$50), up to and including Seventy-Five Dollars (\$75), are entitled to a payment of Fifty Dollars (\$50) subject to the adjustments set forth in Section IV.D.

d. Class Members whose total purchases of any of the Eligible Products during the Class Period amount to more than Twenty-Five Dollars (\$25), up to and including Fifty Dollars (\$50), are entitled to a payment of Twenty-Five Dollars (\$25) subject to the adjustments set forth in Section IV.D.

e. Class Members whose total purchases of any of the Eligible Products during the Class Period amount to more than Ten Dollars (\$10), up to and including Twenty-Five Dollars (\$25), are entitled to a payment of Ten Dollars (\$10) subject to the adjustments set forth in Section IV.D.

f. Class Members whose total purchases of any of the Eligible Products during the Class Period amount to Ten Dollars (\$10) or less (but more than zero (\$0)), are entitled to a payment of Five Dollars (\$5) subject to the adjustments set forth in Section IV.D.

D. Adjustments and Remaining Funds

1. If the total of the timely, valid and approved Claims submitted by Class Members exceeds the available relief, minus any fees, payments, and costs set forth in this Agreement, each eligible Class Member's Initial Claim Amount shall be reduced on a *pro rata* basis, such that the aggregate value of the cash payments does not exceed the Settlement Fund Balance. The Settlement Administrator shall determine each authorized Class Member's *pro rata* share based upon each Class Member's Claim Form and the total number of valid Claims. Accordingly, the actual amount recovered by each Class Member will not be determined until after the Claim Period has ended and all Claims Forms have been received, and may not be determined until after the Final Settlement Date.

2. In no event shall an individual Class Member's recovery amount exceed the individual recovery amounts specified in Section IV.C.

3. If there are any funds remaining in the Settlement Fund Balance from the claim program, including, but not limited to, any funds remaining in the Settlement Fund Balance after all Claims have been paid or un-cashed distributions made payable to eligible Class Members ("Residual

Funds”), the Settlement Administrator shall equally distribute the Residual Funds to the following non-profit organizations: Consumers Union (www.consumersunion.org) and Action for Healthy Kids (www.actionforhealthykids.org). The Residual Funds will not be returned to Defendant. Defendant represents and warrants that any payment of Residual Funds to any charities, non-profit organizations, or government entit(ies) shall not reduce any of its donations or contributions to any entity, charity, charitable foundation or trust, and / or non-profit organization. To be eligible to receive funds from the Residual Funds, each of the foregoing non-profit organizations must declare that they will not use the Residual Funds they receive (if any) for litigation or lobbying purposes.

E. Agreement to Change Product Labeling

1. In addition to the relief discussed above, as part of this Agreement and as a result of the Action and the efforts of Plaintiff and Plaintiff’s Counsel, within three (3) months after the Final Settlement Date or by March 1, 2014, whichever is later, Barbara’s Bakery shall (i) modify the labeling of the Eligible Products so that they no longer contain “all natural,” “no artificial additives,” “no artificial preservatives” or “no artificial flavors” statements on the product labeling; (ii) not refer to or represent any of its products that contain GMO, Synthetic Ingredients, artificial ingredients, or artificial flavors, including all of the Eligible Products, as “all natural,” “no artificial additives,” “no artificial preservatives” or “no artificial flavors” either on the given product’s label or any media or advertising, including Barbara’s Bakery’s website; and (iii) Barbara’s Bakery shall effect the relabeling of all Barbara’s Bakery’s products that contain GMO, Synthetic Ingredients, artificial ingredients, or artificial flavors, including all of the Eligible Products, to eliminate any “all natural,” “no artificial additives,” “no artificial preservatives” or “no artificial flavors” references and redesign the label to eliminate the use of the “All Natural” language on any Barbara’s Bakery’s product, including any of the Eligible Products. For the purposes of this Agreement, sales of Eligible Products already in inventory prior to the Final Settlement Date or March 1, 2014, whichever is later, shall not constitute a violation of this Agreement. Nothing in this provision shall be construed as preventing Barbara’s Bakery from advertising and/or labeling its products that do not contain GMO, Synthetic Ingredients, artificial ingredients, and artificial flavors as “all natural,” “no artificial additives,” “no artificial preservatives” or “no artificial flavors,” respectively. In addition, Barbara’s Bakery shall

1 make no claims (on a product label or otherwise) to the effect that any Barbara's Bakery product does
2 not contain GMO, except as allowed by the Non-GMO Project or substantially similar and
3 independent non-GMO certifying organization, and only for any given product that has been approved
4 and / or verified by the Non-GMO Project's verification program or substantially similar and
5 independent certifying organization's Non-GMO verification program. Nothing contained herein shall
6 prohibit Defendant from disclosing that any given product contains GMO ingredients either on a
7 product label or otherwise, or require Defendant to disclose that a product contains GMO on product
8 labels or advertisements.

9 2. Nothing in this Agreement shall prevent Defendant from implementing the
10 changes referenced in this paragraph prior to the Final Settlement Date or prior to March 1, 2014.

11 3. Nothing in this Agreement shall prevent Defendant from making "natural
12 flavor" claims in accordance with applicable U.S. Food and Drug Administration ("FDA") regulations.

13 4. The terms and requirements of the relief described in Section IV.E.1 shall
14 expire on the earliest of the following dates: (i) three (3) years after the Final Settlement Date; or (ii)
15 the date upon which there are changes to any applicable statute, regulation, or other law that
16 Defendant reasonably believes would require a modification to any of the product labeling in order to
17 comply with the applicable statute, regulation, or law; or (iii) the date upon which there are any
18 changes to any applicable federal or state statutes or regulations that would allow Defendant to label
19 products that contain GMO, Synthetic Ingredients, and /or artificial flavor and ingredients to be
20 labeled "all natural," "no artificial additives," "no artificial preservatives" or "no artificial flavors,"
21 including, but not limited to, changes in FDA, Federal Trade Commission, U.S. Department of
22 Agriculture and other applicable government agencies' regulations, guidances or pronouncements.
23 Plaintiff and his counsel agree that this Agreement does not preclude Defendant from making further
24 disclosures or any labeling changes that (i) Defendant reasonably believes is necessary to comply with
25 any statute, regulation, or other law of any kind (including but not limited to the Federal Food, Drug,
26 and Cosmetic Act, FDA regulations, and/or the California Sherman Food, Drug, and Cosmetic Law);
27 or (ii) are necessitated by product changes and/or reformulations to ensure that Defendant provides
28 accurate product descriptions.

F. Elimination of GMO Ingredients From Certain Eligible Products

1. In addition to the relief discussed above, Barbara's Bakery represents and warrants that it has eliminated the use of GMO ingredients, in accordance with the Non-GMO Project Standard (a copy of which is attached hereto as Exhibit 9 and available at <http://www.nongmoproject.org/product-verification/non-gmo-project-standard/> (last visited April 15, 2013) (the "Non-GMO Project Standard"), in the following Eligible Products: BROWN RICE CRISPS Cereal (Fruit Juice Sweetened flavor), CORN FLAKES Cereal (Fruit Juice Sweetened), HONEST O'S Cereal (Honey Nut, Multigrain and Original flavors), PUFFINS Cereal (Multigrain), ORGANIC SNACKIMALS CEREAL (Cinnamon Crunch and Vanilla Blast flavors, SHREDDED OATS Cereal (Blueberry Burst, Cinnamon Crunch, Shredded Wheat, and Vanilla Almond flavors), and SNACKIMALS ANIMAL COOKIES (Chocolate Chip, Oatmeal, Peanut Butter, Snickerdoodle and Vanilla flavors) (collectively the "First Group of Non-GMO Products"). Barbara's Bakery represents and warrants that the First Group of Non-GMO Products were approved by the Non-GMO Project's (www.nongmoproject.com) Verification Program.

2. In addition to the relief discussed above, Barbara's Bakery represents and warrants that it has and will make continuing reasonable efforts to eliminate the use of GMO ingredients, in accordance with the Non-GMO Project Standard, in the following Eligible Products: PUFFINS (Honey Rice flavor), TOASTED OATMEAL FLAKES (Original flavor), SNACKIMALS ANIMAL COOKIES (Double Chocolate flavor) (collectively, the "Second Group of Non-GMO Products"). Barbara's Bakery represents and warrants that it has submitted the Second Group of Non-GMO Products for approval to the Non-GMO Project's Product Verification Program. Barbara's Bakery anticipates that the Second Group of Non-GMO Products will be approved by the Non-GMO Project by August 2013.

3. In addition to the relief discussed above, Barbara's Bakery represents and warrants that as of the date of this Agreement, Barbara's Bakery is in the process of eliminating GMO ingredients, in accordance with the Non-GMO Project Standard, from the following Eligible Products: HIGH FIBER Cereal (Cranberry, Flax & Granola, and Original flavors), PUFFINS Cereal (Cinnamon, Original, Peanut Butter, and Peanut Butter & Chocolate flavors), PUFFINS PUFFS Cereal (Cocoa

Crunch and Fruit Medley flavors), and FIG BARS (Multigrain, Raspberry and Whole Wheat flavors) (collectively, the “Third Group of Non-GMO Products”). Barbara’s Bakery represents and warrants that it intends to submit the Third Group of Non-GMO Products for approval to the Non-GMO Project’s Product Verification Program. Barbara’s Bakery agrees to employ reasonable efforts to obtain the Non-GMO Project’s approval for the Third Group Non-GMO Products by the Final Settlement Date or by March 1, 2014, whichever is later.

V. NOTICE TO THE CLASS

A. Duties of the Settlement Administrator and the Notice Administrator

1. The Parties shall jointly recommend and retain Rust Consulting, Inc. to be the Settlement Administrator and Kinsella Media, LLC to be the Notice Administrator to help implement the terms of this Agreement. Following the Court’s preliminary approval of this Agreement and the Court’s appointment of the proposed Settlement Administrator and the proposed Notice Administrator, the Notice Administrator shall disseminate notice to the Class as provided for in the Declaration of the Notice Administrator, substantially in the form attached as Exhibit 8 to this Agreement, as specified in the Preliminary Approval Order and in this Agreement, and in order to comply with all applicable laws, including, but not limited to, the Due Process Clause of the Constitution. The Settlement Administrator and Notice Administrator shall abide by the terms, conditions, and obligations of the Agreement, the Settlement Claim Procedures and Claim Calculation Protocol, and the Orders issued by the Court in this Action.

2. The Notice Administrator shall be responsible for, without limitation, consulting on and designing the notice to the Class via various forms of media, including implementing the media purchases. In particular, the Notice Administrator shall be responsible for: (a) arranging for the publication of the Summary Settlement Notice; (b) designing and implementing notice to the Class by various electronic media, including social media and electronic publications; (c) press releases, as discussed in the Declaration of the Notice Administrator attached as Exhibit 8 to this Agreement; (d) responding to requests from Class Counsel and/or Barbara’s Bakery’s Counsel; and (e) otherwise implementing and/or assisting with the dissemination of the notice of the Settlement.

1 3. The Settlement Administrator shall be responsible for, without limitation,
2 dissemination of Class Notice by E-mail and mail, as provided in this Agreement, and implementing
3 the terms of the Claim Process and related administrative activities that include communications with
4 Class Members concerning the Settlement, Claim Process, and their options thereunder. In particular,
5 the Settlement Administrator shall be responsible for: (a) printing, mailing, or arranging for the
6 mailing of the Class Notice; (b) handling returned mail not delivered to Class Members; (c) attempting
7 to obtain updated address information for any Class Notice returned without a forwarding address; (d)
8 making any additional mailings required under the terms of this Agreement; (e) establishing a website
9 that contains the Claim Form that can be completed and submitted on-line; (f) establishing a toll-free
10 voice response unit to which Class Members may refer for information about the Action and the
11 Settlement; (g) receiving and maintaining on behalf of the Court any Class Member correspondence
12 regarding requests for exclusion and objections to the Settlement; (h) forwarding inquiries from Class
13 Members to Class Counsel or their designee for a response, if warranted; (i) establishing a post office
14 box for the receipt of Claim Forms, exclusion requests, and any correspondence; (j) reviewing Claim
15 Forms according to the review protocols set forth in this Agreement and in the Settlement Claim
16 Procedures and Claim Calculation Protocol, attached hereto as Exhibit 7; and (k) otherwise
17 implementing and/or assisting with the claim review process and payment of the claims, pursuant to
18 the terms and conditions of this Agreement.

19 4. The Notice Administrator and the Settlement Administrator shall coordinate
20 their activities to minimize costs in effectuating the terms of this Agreement.

21 5. Because the names of Class Members and other personal information about
22 them will be provided to the Settlement Administrator and the Notice Administrator for purposes of
23 providing cash benefits and processing opt out requests, the Settlement Administrator and the Notice
24 Administrator will execute a confidentiality and non-disclosure agreement with Barbara's Bakery,
25 Defense Counsel, and Class Counsel and will take all reasonable steps to ensure that any information
26 provided to it by Class Members and/or the Parties will be used solely for the purpose of effecting this
27 Settlement.

1 6. The Settlement Administrator and Notice Administrator shall administer the
2 Settlement in accordance with the terms of this Agreement (including but not limited to the Settlement
3 Claim Procedures and Claim Calculation Protocol, attached hereto as Exhibit 7) and, without limiting
4 the foregoing, shall:

5 a. Treat any and all documents, communications, and other information
6 and materials received in connection with the administration of the Settlement as confidential and shall
7 not disclose any or all such documents, communications or other information to any person or entity
8 except as provided for in this Agreement or by court order;

9 b. Receive opt out and other requests from members of the Class to
10 exclude themselves from the Settlement and provide to Class Counsel and Defense Counsel a copy
11 thereof within seven (7) days of receipt. If the Settlement Administrator and/or Notice Administrator
12 receive any exclusion forms or other requests from Class Members to exclude themselves from the
13 Settlement after the deadline for the submission of such forms and requests, the Settlement
14 Administrator and/or Notice Administrator shall promptly provide Class Counsel and Defense Counsel
15 with copies thereof.

16 c. Receive and maintain on behalf of the Court all correspondence from
17 any Class Member regarding the Settlement.

18 7. If the Settlement Administrator and/or the Notice Administrator make a material
19 or fraudulent misrepresentation to, or conceal requested material information from, Class Counsel,
20 Barbara's Bakery, or Barbara's Bakery's Counsel, then the Party to whom the misrepresentation is
21 made shall, in addition to any other appropriate relief, have the right to demand that the Settlement
22 Administrator and/or the Notice Administrator, as applicable, immediately be replaced. If the
23 Settlement Administrator and/or the Notice Administrator fail to perform adequately on behalf of the
24 Parties, the Parties may agree to remove the Settlement Administrator and/or the Notice Administrator.
25 Neither Party shall unreasonably withhold consent to remove the Settlement Administrator and/or the
26 Notice Administrator. The Parties will attempt to resolve any disputes regarding the retention or
27 dismissal of the Settlement Administrator and/or the Notice Administrator in good faith, and, if they
28 are unable to do so, will refer the matter to the Court for resolution.

1 8. The Settlement Administrator shall begin accepting Claim Forms as they are
2 submitted by Class Members for processing.

3 9. Not later than ten (10) calendar days before the date of the Fairness Hearing, the
4 Settlement Administrator and Notice Administrator shall file with the Court: (a) a list of those persons
5 who have opted out or excluded themselves from the Settlement; and (b) the details outlining the
6 scope, methods and results of the notice program.

7 10. The Settlement Administrator shall promptly provide copies of any requests for
8 exclusion, objections, and/or related correspondence to Class Counsel and Barbara's Bakery's
9 Counsel.

10 11. No later than ten (10) calendar days after this Agreement is filed with the Court,
11 Barbara's Bakery shall mail or cause the items specified in 28 U.S.C. §1715(b) to be mailed to each
12 State and Federal official, as specified in 28 U.S.C. §1715(a).

13 12. The Settlement Administrator shall administer the Settlement in accordance
14 with the terms of this Agreement and in accordance with the Claim Procedure and Claim Calculation
15 Protocol, attached hereto as Exhibit 7.

16 13. Any Class Member who, in accordance with the terms and conditions of this
17 Agreement, neither seeks exclusion from the Class nor files a Claim Form, will not be entitled to
18 receive any cash pursuant to this Stipulation of Settlement, but will be bound together with all Class
19 Members by all of the terms of this Agreement, including the terms of the Final Order and Judgment
20 to be entered in the Action and the releases provided for herein, and will be barred from bringing any
21 action in any forum (state or federal) against any of the Released Parties concerning the matters
22 subject to the Release.

23 14. Claim Forms that do not meet the requirements set forth in this Agreement and
24 in the Claim Form instructions shall be rejected. Where a good faith basis exists, the Settlement
25 Administrator may reject a Class Member's Claim Form for, among other reasons, the following:

26 a. The Class Member failed to provide adequate support of their claim
27 pursuant to a request of the Settlement Administrator;

28 b. The Class Member purchased products that are not covered by the terms

1 of this Stipulation of Settlement;

- 2 c. Failure to fully complete and/or sign the Claim Form;
- 3 d. Illegible Claim Form;
- 4 e. More than one Claim Form is submitted by persons who reside in the
- 5 same household;
- 6 f. The Claim Form is fraudulent;
- 7 g. The Claim Form is duplicative of another Claim Form;
- 8 h. The person submitting the Claim Form is not a Class Member;
- 9 i. The person submitting the Claim Form is requesting that funds be paid
- 10 to a person or entity that is not the Class Member for whom the Claim Form is submitted;
- 11 j. Failure to submit a Claim Form by the end of the Claim Period; and/or
- 12 k. The Claim Form otherwise does not meet the requirements of this

13 Agreement.

14 15. The Settlement Administrator shall determine whether a Claim Form meets the
 15 requirements set forth in this Agreement. Each Claim Form shall be submitted to and reviewed by the
 16 Settlement Administrator, who shall determine in accordance with the terms and conditions of this
 17 Agreement the extent, if any, to which each claim shall be allowed. The Settlement Administrator
 18 shall have the authority to determine whether a claim by any Class Member is complete and timely.
 19 The Settlement Administrator shall use all reasonable efforts and means to identify and reject
 20 duplicate and/or fraudulent claims, including, without limitation, indexing all funds provided to Class
 21 Members.

22 16. Any Class Member who fails to submit a Claim Form by the end of the Claim
 23 Period shall be forever barred from receiving any benefit pursuant to this Agreement, but shall in all
 24 other respects be bound by all of the terms of this Agreement, the terms of the Final Order and
 25 Judgment to be entered in the Action, and the releases provided for herein, and will be barred from
 26 bringing any action in any forum (state or federal) against any of the Released Parties concerning any
 27 of the matters subject to the Release. The Claim Form will be deemed to have been submitted when
 28 the attestation form are posted, if received with a postmark or equivalent mark by a courier company

1 indicated on the envelope or mailer with the instructions set out in the Claim Form. In all other cases,
 2 the Claim Form shall be deemed to have been submitted when it is actually received by the Settlement
 3 Administrator.

4 17. Class Counsel and Defense Counsel shall have the right to inspect the Claim
 5 Forms and supporting documentation received by the Settlement Administrator at any time upon
 6 reasonable notice.

7 18. All notification duties imposed by 28 U.S.C. §1715, including the
 8 corresponding expenses, shall be separate and in addition to any other obligation imposed herein.

9 19. Barbara's Bakery and the Released Parties are not obligated to (and will not be
 10 obligated to) compute, estimate, or pay any taxes on behalf of Plaintiff (or his counsel), any Class
 11 Member, Plaintiff's Counsel, the Notice Administrator and/or the Settlement Administrator.

12 B. Class Notice:

13 1. Dissemination of the Mailed Class Notice

14 a. No later than five (5) calendar days after entry of the Preliminary
 15 Approval Order, Barbara's Bakery shall provide the Notice Administrator with the name, mailing
 16 address, and e-mail address of each reasonably identifiable Class Member that it possesses.

17 b. Beginning not later than ten (10) calendar days after entry of the
 18 Preliminary Approval Order and to be substantially completed not later than twenty-five (25) calendar
 19 days after entry of the Preliminary Approval Order, and subject to the requirements of the Preliminary
 20 Approval Order and the Settlement Agreement, the Notice Administrator shall send the Class Notice
 21 by Electronic Mail ("E-Mail") to: (i) each reasonably identifiable Class Member's last known E-Mail
 22 address; and (ii) each appropriate State and Federal official, as specified in 28 U.S.C. §1715, and shall
 23 otherwise comply with Fed. R. Civ. P. 23 and any other applicable statute, law, or rule, including but
 24 not limited to, the Due Process Clause of the United States Constitution.

25 c. No later than forty-five (45) calendar days after entry of the Preliminary
 26 Approval Order, the Notice Administrator shall send the Summary Settlement Notice by First Class
 27 U.S. Mail, proper postage prepaid, to each Class Member whose E-mail address returned a message as
 28 undeliverable, subject to the existence of such information as provided by Barbara's Bakery pursuant

1 to Section V.B.1.a of this Agreement.

2 d. The Notice Administrator shall: (i) re-mail any Summary Settlement
3 Notices returned by the United States Postal Service with a forwarding address that are received by the
4 Notice Administrator; and (ii) by itself or using one or more address research firms, as soon as
5 practicable following receipt of any returned Summary Settlement Notices that do not include a
6 forwarding address, research any such returned mail for better addresses and promptly mail copies of
7 the Summary Settlement Notice to the better addresses so found.

8 e. Barbara's Bakery's Counsel shall provide to the Notice Administrator,
9 within ten (10) business days of the entry of the Preliminary Approval Order, a list of all counsel for
10 anyone who has litigation against Barbara's Bakery that involves the Eligible Products. The Notice
11 Administrator shall mail copies of the Class Notice to all such legal counsel. Barbara's Bakery will
12 promptly direct the Notice Administrator to serve the Class Notice on counsel for any Class Members
13 who subsequently initiate litigation, arbitration, or other proceedings against Barbara's Bakery relating
14 to claims alleging events occurring during the Class Period, the Eligible Products, and/or otherwise
15 involving the Release.

16 2. Contents of the Class Notice: The Claim Form and the Class Notice shall be in
17 a form substantially similar to the document attached to this Agreement as Exhibits 1 and 2,
18 respectively, and shall advise Class Members of the following:

19 a. General Terms: The Class Notice shall contain a plain and concise
20 description of the nature of the Action and the proposed Settlement, including information on the
21 identity of Class Members, how the proposed Settlement would provide relief to the Class and Class
22 Members, what claims are released under the proposed Settlement and other relevant terms and
23 conditions.

24 b. Opt-Out Rights: The Class Notice shall inform Class Members that they
25 have the right to opt out of the Settlement. The Class Notice shall provide the deadlines and
26 procedures for exercising this right.

27 c. Objection to Settlement: The Class Notice shall inform Class Members
28 of their right to object to the proposed Settlement and appear at the Fairness Hearing. The Class

1 Notice shall provide the deadlines and procedures for exercising these rights.

2 d. Fees and Expenses: The Class Notice shall inform Class Members about
3 the amounts being sought by Plaintiff's Counsel as Attorneys' Fees and Expenses and the individual
4 awards to Plaintiff, and that such amounts will be paid out of the Settlement Fund.

5 e. Consumer Information: The Class Notice shall inform the Class
6 Members that any information they provide may be submitted to a federal or state agency in the
7 administration of this relief.

8 f. Claim Form: The Class Notice shall include the Claim Form, which
9 shall inform the Class Member that he or she must fully complete and timely return the Claim Form
10 within the Claim Period to be eligible to obtain relief pursuant to this Agreement.

11 C. The Summary Settlement Notice: The Notice Administrator shall have the publication
12 of the Summary Settlement Notice substantially completed no later than ninety (90) calendar days
13 after entry of the Preliminary Approval Order as described in the Declaration of the Notice
14 Administrator, attached as Exhibit 8, and in such additional newspapers, magazines, and/or other
15 media outlets as shall be agreed upon by the Parties. The form of Summary Settlement Notice agreed
16 upon by the Parties is in the form substantially similar to the one attached to the Agreement as
17 Exhibit 6.

18 D. Internet Web site: Prior to the dissemination of the Class Notice pursuant to Section
19 V.B.1 to Section V.C, the Notice Administrator shall establish an Internet website,
20 www.BarbarasBakerySettlement.com, that will inform Class Members of the terms of this Agreement,
21 their rights, dates and deadlines and related information. The web site shall include, in .pdf format,
22 materials agreed upon by the Parties and/or required by the Court. Banner ads on the Internet shall
23 direct Class Members to the website.

24 E. Toll-Free Telephone Number: Prior to the dissemination of the Class Notice pursuant
25 to Section V.B.1 to Section V.C, the Notice Administrator shall establish a toll-free telephone number
26 that will provide Settlement-related information to Class Members.

1 **VI. REQUESTS FOR EXCLUSION**

2 A. Members of the Class may elect to opt out of the Class or the Settlement, relinquishing
3 their rights to benefits hereunder. Members of the Class who opt out of the Settlement will not release
4 their claims pursuant to this Agreement. Putative class members wishing to opt out of the Settlement
5 must send to the Settlement Administrator by U.S. Mail a personally signed letter including their name
6 and address, and providing a clear statement communicating that they elect to be excluded from the
7 Class. Any request for exclusion or opt out must be postmarked on or before the opt out deadline date
8 specified in the Preliminary Approval Order. The date of the postmark on the return-mailing envelope
9 shall be the exclusive means used to determine whether a request for exclusion has been timely
10 submitted. The Settlement Administrator shall forward copies of any written requests for exclusion to
11 Class Counsel and Barbara's Bakery's Counsel. The Settlement Administrator shall file a list
12 reflecting all requests for exclusion with the Court no later than ten (10) calendar days before the
13 Fairness Hearing.

14 B. Any potential Class Member who does not file a timely written request for exclusion as
15 provided in the preceding Section VI.A shall be bound by all subsequent proceedings, orders, and
16 judgments, including, but not limited to, the Release, in the Action, even if he or she has litigation
17 pending or subsequently initiates litigation against Barbara's Bakery relating to the claims and
18 transactions released in the Action.

19 **VII. OBJECTIONS TO SETTLEMENT AND APPEARANCE AT FAIRNESS HEARING**

20 A. Any Class Member who has not filed a timely written request for exclusion and who
21 wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed
22 Settlement, or to the award of Attorneys' Fees and Expenses, or the individual awards to Plaintiff,
23 must deliver to the Class Counsel identified in the Class Notice and to Barbara's Bakery's Counsel,
24 and file with the Court (through the Court's Management / Electronic Case Files ("CM/ECF") or
25 through any other method in which the Court will accept filings), no later than the objection deadline
26 date specified in the Preliminary Approval Order, or as the Court otherwise may direct, a written
27 statement of the objections, as well as the specific reason(s), if any, for each objection, including any
28 legal support the Class Member wishes to bring to the Court's attention, any evidence or other

1 information the Class Member wishes to introduce in support of the objections, and a statement of
2 whether the Class Member intends to appear and argue at the Fairness Hearing. Class Members may
3 do so either on their own or through an attorney retained at their own expense. The Parties shall
4 request that the Court allow any interested party to file a reply to any objection, as described in this
5 Section VII.A, no later than seven (7) calendar days before the Fairness Hearing.

6 B. Any Class Member, including one who files and serves a written objection, as
7 described in the preceding Section VII.A, may appear at the Fairness Hearing, either in person or
8 through personal counsel hired at the Class Member's expense, to object to or comment on the
9 fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, or to the award of
10 Attorneys' Fees and Expenses or any award to the individual Plaintiff. Class Members or their
11 attorneys who intend to make an appearance at the Fairness Hearing must deliver a notice of intention
12 to appear to one of the Class Counsel identified in the Class Notice and to Barbara's Bakery's
13 Counsel, and file said notice with the Court (through CM/ECF or through any other method in which
14 the Court will accept filings), no later than the date specified in the Preliminary Approval Order, or as
15 the Court may otherwise direct.

16 C. Any Class Member who fails to comply with the provisions of Section VII.A above
17 shall waive and forfeit any and all rights he or she may have to object, and shall be bound by all the
18 terms of this Agreement and by all proceedings, orders and judgments, including, but not limited to,
19 the Release, in the Action.

20 D. Any Class Member who objects to the Settlement shall be entitled to all of the benefits
21 of the Settlement if this Agreement and the terms contained therein are approved, as long as the
22 objecting Class Member complies with all requirements of this Agreement applicable to Class
23 Members, including the timely submission of Claim Forms and other requirements contained in this
24 Agreement.

25 **VIII. RELEASE AND WAIVER**

26 A. The Parties agree to the following release and waiver, which shall take effect upon
27 entry of the Final Order and Final Judgment.

28 B. In consideration for the Settlement benefits described in this Agreement, Plaintiff and

1 the other members of the Class, on behalf of themselves, their heirs, guardians, assigns, executors,
2 administrators, predecessors, and/or successors, will fully, finally and forever release, relinquish,
3 acquit, and discharge the Released Parties from, and shall not now or hereafter institute, maintain, or
4 assert on their own behalf, on behalf of the Class, any and all manner of claims, actions, causes of
5 action, suits, rights, debts, sums of money, payments, obligations, reckonings, contracts, agreements,
6 executions, promises, damages, liens, judgments, and demands of whatever kind, type or nature
7 whatsoever, both at law and in equity, whether past, present, or future, mature or not yet mature,
8 known or unknown, suspected or unsuspected, contingent or non-contingent, that arose during the
9 Class Period, whether based on federal, state, or local law, statute, ordinance, regulation, code,
10 contract, common law, or any other source, or any claim that Plaintiff or Class Members ever had,
11 now have, may have, or hereafter can, shall, or may ever have against the Released Parties that were or
12 reasonably could have been alleged in the Action or in any other court, tribunal, arbitration panel,
13 commission, agency, or before any governmental and/or administrative body, or any other
14 adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever relating to
15 claims that were or reasonably could have been alleged in the Action, including, but without in any
16 way limiting the generality of the foregoing, arising from, directly or indirectly, or in any way
17 whatsoever pertaining or relating to (1) the claims alleged in the Action, (2) any communications,
18 disclosures, nondisclosures, representations, statements, claims, omissions, warnings, messaging,
19 marketing, advertising, promotion, packaging, displays, brochures, sale, and/or resale by the Released
20 Parties of the Eligible Products arising from or in any way whatsoever relating to claims that were or
21 reasonably could have been alleged in the Action; (3) any claims for rescission, restitution, or unjust
22 enrichment for all damages of any kind related to the purchase, sale, or marketing of the Eligible
23 Products arising from or in any way whatsoever relating to claims that were or reasonably could have
24 been alleged in the Action; (4) violations of any state's deceptive, unlawful and/or unfair business
25 and/or trade practices, false, misleading or fraudulent advertising, consumer fraud and/or consumer
26 protection statutes related to the purchase, sale, or marketing of the Eligible Products arising from or
27 in any way whatsoever relating to claims that were or reasonably could have been alleged in the
28 Action; (5) any violation of the Uniform Commercial Code, any breaches of express, implied, and/or

1 any other warranties, any similar federal, state, or local statutes, codes related to the purchase, sale, or
2 marketing of the Eligible Products arising from or in any way whatsoever relating to claims that were
3 or reasonably could have been alleged in the Action; or (6) damages, costs, expenses, extra-contractual
4 damages, compensatory damages, exemplary damages, special damages, penalties, punitive damages
5 and/or damage multipliers, disgorgement, declaratory relief, expenses, interest, and/or attorneys' fees
6 and costs related to the purchase, sale, or marketing of the Eligible Products arising from or in any
7 way whatsoever relating to claims that were or reasonably could have been alleged in the Action.

8 C. Notwithstanding the language in this section and/or this Agreement, the Plaintiff and
9 the other members of the Class are not releasing (1) any claims of or relating to personal injury; and
10 (2) any of Defendant's obligations pursuant to this Agreement.

11 D. Plaintiff represents and warrants that he is the sole and exclusive owner of all claims
12 that he is personally releasing under this Agreement. Plaintiff further acknowledges that he has not
13 assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right,
14 title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including
15 without limitation, any claim for benefits, proceeds or value under the Action.

16 E. Without in any way limiting its scope, and, except to the extent otherwise specified in
17 the Agreement, this Release covers by example and without limitation, any and all claims for
18 attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees,
19 costs, and/or disbursements incurred by Plaintiff's Counsel, or by Plaintiff or the Class Members.

20 F. Plaintiff expressly understands and acknowledges, and all Class Members will be
21 deemed by the Final Order and Final Judgment to acknowledge, that certain principles of law,
22 including, but not limited to, **Section 1542 of the Civil Code of the State of California, provide that**
23 **"a general release does not extend to claims which the creditor does not know or suspect to exist**
24 **in his or her favor at the time of executing the release, which if known by him or her must have**
25 **materially affected his or her settlement with the debtor."** To the extent that anyone might argue
26 that these principles of law are applicable, Plaintiff hereby agrees that the provisions of all such
27 principles of law or similar federal or state laws, rights, rules, or legal principles, to the extent they are
28 found to be applicable herein, are hereby knowingly and voluntarily waived, relinquished and released

1 by Plaintiff and all Class Members.

2 G. Nothing in this Release shall preclude any action to enforce the terms of the
3 Agreement, including participation in any of the processes detailed in the Agreement.

4 H. Plaintiff and Defendant hereby agree and acknowledge that the provisions of this
5 Release together constitute an essential and material term of the Agreement and shall be included in
6 any Final Order and Final Judgment entered by the Court.

7 **IX. ATTORNEYS' FEES AND EXPENSES AND INDIVIDUAL PLAINTIFF AWARD**

8 A. Class Counsel agrees to make and Barbara's Bakery agrees not to oppose, an
9 application for an award of Attorneys' Fees and Expenses in the Action that will not exceed an amount
10 equal to twenty-five percent (25%) of the Settlement Fund (One Million Dollars (\$1,000,000)), which
11 shall be the sole aggregate compensation paid by Barbara's Bakery for Class Counsel representing the
12 Class. The ultimate award of Attorneys' Fees and Expenses will be determined by the Court.

13 B. The denial, downward modification, or failure to grant the request for Attorneys' Fees
14 and Expenses shall not constitute grounds for modification or termination of this Agreement or the
15 proposed Settlement. The Parties negotiated the amount of the Attorneys' Fees and Expenses to be
16 sought by Class Counsel only after reaching an agreement upon the relief provided to the Class.

17 C. Barbara's Bakery agrees to pay, and shall pay or cause to be paid, an initial payment to
18 Class Counsel of seven-tenths (7/10) of the amount of Attorneys' Fees and Expenses awarded by the
19 Court ("First Fee Payment"), within ten (10) calendar days after entry of the Court's order so awarding
20 Attorneys' Fees and Expenses, notwithstanding any appeal, and upon service of a fully executed
21 Stipulated Undertaking and Order by Class Counsel, substantively in the form attached hereto as
22 Exhibit 10, to Barbara's Bakery's Counsel. The Stipulated Undertaking and Order shall provide that
23 Class Counsel are jointly and severally liable to Barbara's Bakery for the repayment of the First Fee
24 Payment, without interest, should the Final Order be reversed or the fee order reversed or reduced on
25 appeal. In addition, no interest will accrue on such amounts at any time.

26 D. If the Final Order and Final Judgment (or the order awarding Attorneys' Fees and
27 Expenses) is reversed, vacated, modified, and/or remanded for further proceedings or otherwise
28 disposed of in any manner other than one resulting in an affirmance, then Plaintiff's Counsel (or, as

applicable, any and all successor(s) or assigns of their respective firms) shall, within ten (10) calendar days of such event, (i) repay to Barbara's Bakery, as applicable, the full amount of the First Fee Payment paid to them, or (ii) repay to Barbara's Bakery the amount by which the award of Attorneys' Fees and Expenses has been reduced. Counsel Counsel (or, as applicable, any and all successor(s) or assigns of their firm) shall be jointly and severally liable for repayment to Barbara's Bakery of the First Fee Payment, without interest, and each such entity shall execute a guarantee of repayment concurrently with this Agreement.

E. Barbara's Bakery agrees to pay and shall pay or cause to be paid a final payment of the remaining three-tenths (3/10) of the Attorneys' Fees and Expenses awarded by the Court ("Final Fee Payment"), to Class Counsel within ten (10) calendar days after the Final Settlement Date.

F. Class Counsel may petition the Court for an incentive award of up to Two Thousand Five Hundred Dollars (\$2,500.00) for Plaintiff. The purpose of such an award shall be to compensate Plaintiff for efforts and risks taken by him on behalf of the Class. Barbara's Bakery agrees to pay and shall pay or cause to be paid an incentive award made and approved by the Court ("Incentive Award") within ten (10) calendar days after the occurrence of the Final Settlement Date in accordance with the instructions provided by Class Counsel.

G. Barbara's Bakery shall not be liable for or obligated to pay any fees, expenses, costs, or disbursements to, or incur any expense on behalf of, any person or entity, either directly or indirectly, in connection with the Action or this Settlement Agreement, other than the amount or amounts expressly provided for in this Settlement Agreement.

X. PRELIMINARY APPROVAL ORDER, FINAL ORDER, FINAL JUDGMENT AND RELATED ORDERS

A. The Parties shall seek from the Court, within fifteen (15) business days after the execution of this Agreement, a Preliminary Approval Order in a form substantially similar to Exhibit 5. The Preliminary Approval Order shall, among other things:

1. Certify a nationwide settlement-only class, approve Plaintiff Richard W. Trammell as class representative and appoint Tina Wolfson and Robert Ahdoot of Ahdoot & Wolfson, PC as counsel for the class, pursuant to Fed. R. Civ. P. 23;

2. Preliminarily approve the Settlement;
3. Require the dissemination of the Notice and the taking of all necessary and appropriate steps to accomplish this task;
4. Determine that the notice complies with all legal requirements, including, but not limited to, the Due Process Clause of the United States Constitution;
5. Schedule a date and time for a Fairness Hearing to determine whether the Preliminary Approval Order should be finally approved by the Court;
6. Require Class Members who wish to exclude themselves to submit an appropriate and timely written request for exclusion as directed in the Agreement and Class Notice and that a failure to do so shall bind those Class Members who remain in the Class;
7. Require Class Members who wish to object to the Agreement to submit an appropriate and timely written statement as directed in the Agreement and Class Notice;
8. Require Class Members who wish to appear to object to the Agreement to submit an appropriate and timely written statement as directed in the Agreement and Class Notice;
9. Require attorneys representing individual Class Members, at their own expense, to file a notice of appearance as directed in the Agreement and Class Notice;
10. Issue a preliminary injunction pursuant to the Agreement;
11. Appoint the Settlement Administrator and/or the Notice Administrator;
12. Authorize Barbara's Bakery to take all necessary and appropriate steps to establish the means necessary to implement the Agreement;
13. Issue other related orders to effectuate the preliminary approval of the Agreement.

B. After the Fairness Hearing, the Parties shall seek to obtain from the Court a Final Order and Final Judgment in the forms substantially similar to Exhibits 3 and 4, respectively. The Final Order and Final Judgment shall, among other things:

1. Find that the Court has personal jurisdiction over all Class Members, the Court has subject matter jurisdiction over the claims asserted in the Action, and that venue is proper.
2. Finally approve the Agreement and Settlement, pursuant to Fed. R. Civ. P. 23;

3. Finally certify the Class for settlement purposes only;

4. Find that the notice and the notice dissemination methodology complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution;

5. Dismiss the Action with prejudice;

6. Incorporate the Release set forth in the Agreement and make the Release effective as of the date of the Final Order and Final Judgment;

7. Issue a permanent injunction pursuant to the Agreement;

8. Authorize the Parties to implement the terms of the Agreement;

9. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Order and Final Judgment, and for any other necessary purpose; and

10. Issue related Orders to effectuate the final approval of the Agreement and its implementation.

XI. MODIFICATION OR TERMINATION OF THIS AGREEMENT

A. The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however that, after entry of the Final Order and Final Judgment, the Parties may by written agreement effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Class or approval by the Court if such changes are consistent with the Court's Final Order and Final Judgment and do not limit the rights of Class Members under this Agreement.

B. This Agreement shall terminate at the discretion of either Barbara's Bakery or Plaintiff, through Class Counsel, if: (1) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of this Agreement that the terminating party reasonably determines is material, including, without limitation, the terms of relief, the findings, or conclusions of the Court, the provisions relating to notice, the definition of the Class, and/or the terms of the Release; or (2) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the Final Order and Judgment, or any of the Court's findings of fact or conclusions of law, that the

1 terminating party in his or her sole judgment and discretion reasonably determines is material. The
2 terminating party must exercise the option to withdraw from and terminate this Agreement, as
3 provided in this Section XI, by a signed writing served on the other Parties no later than twenty (20)
4 calendar days after receiving notice of the event prompting the termination. In the event that a
5 terminating party exercises his or her option to withdraw from and terminate this Agreement, this
6 Agreement and the Settlement proposed herein shall become null and void and the Parties will be
7 returned to their respective positions existing immediately before the execution of this Agreement.

8 C. If an option to withdraw from and terminate this Agreement arises under Section IX.B
9 above, neither Barbara's Bakery nor Plaintiff is required for any reason or under any circumstance to
10 exercise that option and any exercise of that option shall be in good faith.

11 D. If this Agreement is terminated pursuant to Section IX.B, above, then:

12 1. This Agreement shall be null and void and shall have no force or effect, and no
13 Party to this Agreement shall be bound by any of its terms, except for the terms of this Section XI.D of
14 this Agreement;

15 2. The Parties will petition to have any stay orders entered pursuant to this
16 Agreement lifted;

17 3. All of its provisions, and all negotiations, statements, and proceedings relating
18 to it shall be without prejudice to the rights of Barbara's Bakery, Plaintiff or any Class Member, all of
19 whom shall be restored to their respective positions existing immediately before the execution of this
20 Agreement, except that the Parties shall cooperate in requesting that the Court set a new scheduling
21 order such that neither party's substantive or procedural rights is prejudiced by the attempted
22 Settlement;

23 4. Released Parties expressly and affirmatively reserve all defenses, arguments,
24 and motions as to all claims that have been or might later be asserted in the Action, including, without
25 limitation, the argument that the Action may not be litigated as a class action;

26 5. Plaintiffs and all other Class Members, on behalf of themselves and their heirs,
27 assigns, executors, administrators, predecessors, and successors, expressly and affirmatively reserve
28 and do not waive all motions as to, and arguments in support of, all claims, causes of actions or

1 remedies that have been or might later be asserted in the Action including, without limitation, any
2 argument concerning class certification, consumer fraud, and treble or other damages;

3 6. Neither this Agreement, the fact of its having been made, nor the negotiations
4 leading to it, nor any discovery or action taken by a Party or Class Member pursuant to this
5 Agreement, or any documents or communications pertaining to this Agreement shall be admissible or
6 entered into evidence for any purpose whatsoever in the Action or in any proceeding, other than to
7 enforce the terms of this Agreement;

8 7. The Parties stipulate that any Settlement-related order(s) or judgment(s) entered
9 in this Action after the date of execution of this Agreement shall be deemed vacated and shall be
10 without any force or effect;

11 8. All costs incurred in connection with the Settlement, including, but not limited
12 to, notice, publication, and customer communications (excluding the Attorneys' Fees and Expenses)
13 will be paid from the Settlement Fund, and any remaining amounts from the Initial Deposit or the
14 Settlement Fund will be returned to Barbara's Bakery with an accounting of amounts spent within ten
15 (10) calendar days. Neither the Class, Plaintiff nor Class Counsel shall be responsible for any of these
16 costs or other Settlement-related costs; and

17 9. Notwithstanding the terms of this paragraph, if Settlement is not consummated,
18 Plaintiff's Counsel may include any time spent in Settlement efforts as part of any statutory fee
19 petition filed at the conclusion of the case, and Barbara's Bakery reserves the right to object to the
20 reasonableness of such requested fees.

21 E. Notwithstanding any provision herein, the amount of any award by the Court, if any,
22 for the Incentive Award or the Attorneys' Fees and Expenses shall not operate to terminate or cancel
23 this Agreement. The Parties negotiated the amount of the Attorneys' Fees and Expenses and the
24 Incentive Award to be sought by Class Counsel and Plaintiff, respectively, only after reaching an
25 agreement upon the relief provided to the Class.

1 **XII. GENERAL MATTERS AND RESERVATIONS**

2 A. The obligation of the Parties to conclude the proposed Settlement is and shall be
3 contingent upon entry by the Court of the Final Order and Final Judgment approving the Settlement,
4 from which the time to appeal has expired or which has remained unmodified after any appeal(s).

5 B. This Agreement reflects, among other things, the compromise and settlement of
6 disputed claims among the Parties hereto, and neither this Agreement nor the releases provided in it,
7 nor any consideration for the Agreement, nor any actions taken to carry out this Agreement are
8 intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or
9 the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters
10 respecting class certification) on the part of any party. Barbara's Bakery expressly denies the
11 allegations of Plaintiff's complaints. Neither this Agreement, nor the fact of settlement, nor the
12 settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an
13 admission of any fault or omission by Barbara's Bakery, or be offered or received in evidence as an
14 admission, concession, presumption, or inference of any wrongdoing by Barbara's Bakery in any
15 proceeding, other than such proceedings as may be necessary to consummate, interpret, or enforce this
16 Agreement.

17 C. The Parties and their counsel agree to keep the existence and contents of this
18 Agreement confidential until the date on which the Agreement is filed with the Court, provided,
19 however, that this section shall not prevent Barbara's Bakery from disclosing such information, prior
20 to the date on which the Agreement is filed, to state and federal agencies, independent accountants,
21 actuaries, advisors, financial analysts, insurers, or attorneys, nor shall it prevent the Parties and their
22 counsel from disclosing such information to persons or entities (such as experts, courts, co-counsel,
23 and/or administrators) to whom the Parties agree disclosure must be made in order to effectuate the
24 terms and conditions of this Agreement; provided further, that Barbara's Bakery may disclose publicly
25 the terms of the Agreement that it deems necessary to meet its regulatory obligations or fiduciary
26 duties.

27 D. Plaintiff and Plaintiff's Counsel agree that the confidential information made available
28 to them solely through the settlement process was made available, as agreed to, on the condition that

1 neither Plaintiff nor his counsel may disclose it to third parties (other than experts or consultants
2 retained by Plaintiff in connection with this case); that it not be the subject of public comment; that it
3 not be used by Plaintiff or Plaintiff's Counsel in any way in this litigation should the Settlement not be
4 achieved, and that it is to be returned if the Settlement is not concluded; provided, however, that
5 nothing contained in this Agreement shall prohibit Plaintiff from seeking such information through
6 formal discovery or from referring to the existence of such information in connection with the
7 Settlement of this litigation.

8 E. Within one hundred and eighty (180) calendar days after the Final Settlement Date
9 (unless the time is extended by agreement of the Parties), Plaintiff's Counsel, and any expert or other
10 consultant employed by them in such capacity or any other individual with access to documents
11 provided by Barbara's Bakery to Plaintiff's Counsel, shall either: (i) return to Barbara's Bakery's
12 Counsel, all such documents and materials (and all copies of which documents in whatever form made
13 or maintained) produced by Barbara's Bakery in the Action and any and all handwritten notes
14 summarizing, describing, or referring to such documents; or (ii) certify to Barbara's Bakery's Counsel
15 that all such documents and materials (and all copies of such documents in whatever form made or
16 maintained) produced by Barbara's Bakery in the Action any and all handwritten notes summarizing,
17 describing, or referring to such documents have been destroyed, provided, however, that this section
18 shall not apply to any documents made part of the record in connection with a Claim, nor to any
19 documents made part of a Court filing, nor to Plaintiff's Counsel's work product. Barbara's Bakery's
20 Counsel agrees to hold all documents returned by Plaintiff's Counsel, and any expert or other
21 consultant or any other individual employed by Plaintiff's Counsel in such capacity with access to
22 documents provided by Barbara's Bakery until one year after the distribution of the Settlement Fund
23 Balance to Class Members who submitted valid Claim Forms.

24 F. Two (2) years after the distribution of the Settlement Fund Balance to Class Members
25 who submitted acceptable Claim Forms, the Settlement Administrator and Notice Administrator shall
26 destroy any and all documents and materials related to the Action or this Settlement, including any
27 Claim Forms, information related to Class Members, and any and all information and/or
28 documentation submitted by or relating to Class Members.

1 G. Barbara's Bakery's execution of this Agreement shall not be construed to release —
2 and Barbara's Bakery expressly does not intend to release — any claim Barbara's Bakery may have or
3 make against any insurer for any cost or expense incurred in connection with this Settlement,
4 including, without limitation, for attorneys' fees and costs.

5 H. Class Counsel represent that: (1) they are authorized by Plaintiff to enter into this
6 Agreement on behalf of Plaintiff; and (2) they are seeking to protect the interests of the Class. Class
7 Counsel shall take all necessary actions to accomplish approval of the Settlement, the Class Notice,
8 and dismissal of the Action, pursuant to the terms and conditions of this Agreement.

9 I. Plaintiff represents and certifies that: (1) he has agreed to serve as a representative of
10 the Class; (2) he is willing, able, and ready to perform all of the duties and obligations of a
11 representative of the Class; (3) he has read the operative complaint, or has had the contents of such
12 pleadings described to him; (4) he is familiar with the results of the fact-finding undertaken by Class
13 Counsel; (5) he has read this Agreement or has received a detailed description of it from Class Counsel
14 and he has agreed to its terms; (6) he has consulted with Class Counsel about the Action and this
15 Agreement and the obligations imposed on a representative of the Class; (7) he has authorized Class
16 Counsel to execute this Agreement on his behalf; and (8) he shall remain and serve as a representative
17 of the Class until the terms of the Agreement are effectuated, this Agreement is terminated in
18 accordance with its terms, or the Court at any time determines that Plaintiff cannot represent the Class.

19 J. Barbara's Bakery represents and warrants that the individual(s) executing this
20 Agreement is/are authorized to enter into this Agreement on behalf of Barbara's Bakery.

21 K. The Parties (including their counsel, successors, and assigns) agree to cooperate fully
22 and in good faith with one another and to use their best efforts to effectuate the Settlement, including
23 without limitation in seeking preliminary and final Court approval of this Agreement and the
24 Settlement embodied herein, carrying out the terms of this Agreement, and promptly agreeing upon
25 and executing all such other documentation as may be reasonably required to obtain final approval by
26 the Court of the Settlement. In the event that the Court fails to approve the Settlement or fails to issue
27 the Final Order and Final Judgment, the Parties agree to use all reasonable efforts, consistent with this
28 Agreement and subject to Section XI.B herein, to cure any defect identified by the Court. Each party

1 will cooperate with the other party in connection with effectuating the Settlement or the administration
2 of claims thereunder. Any requests for cooperation shall be narrowly tailored and reasonably
3 necessary for the requesting party to recommend the Settlement to the Court, and to carry out its terms.

4 L. This Agreement, complete with its exhibits, sets forth the sole and entire agreement
5 among the Parties with respect to its subject matter, and it may not be altered, amended, or modified
6 except by written instrument executed by Class Counsel and Barbara's Bakery's Counsel. The Parties
7 expressly acknowledge that no other agreements, arrangements, or understandings not expressed in
8 this Agreement exist among or between them and that in deciding to enter into this Agreement, they
9 rely solely upon their judgment and knowledge. This Agreement supersedes any prior agreements,
10 understandings, or undertakings (written or oral) by and between the Parties regarding the subject
11 matter of this Agreement.

12 M. This Agreement and any amendments thereto shall be governed by and interpreted
13 according to the laws of the State of California, notwithstanding its conflict of laws provisions.

14 N. Any disagreement and/or action to enforce this Agreement shall be commenced and
15 maintained only in the Court in which this Action is pending.

16 O. Whenever this Agreement requires or contemplates that one of the Parties shall or may
17 give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturdays,
18 Sundays and Legal Holidays) express delivery service as follows:

19
20 1. If to Barbara's Bakery, then to:

21
22 Clement L. Glynn
23 GLYNN & FINLEY, LLP
24 100 Pringle Avenue, Suite 500
25 Walnut Creek, California 94596
26 Telephone: 925-210-2801
27 Facsimile: 925-945-1975
28 E-mail: cglynn@glynnfinley.com

2. If to Plaintiff, then to:

Tina Wolfson
 Robert Ahdoot
 AHDOOT & WOLFSON, PC
 10850 Wilshire Blvd., Suite 370
 Los Angeles, California 90024
 Telephone: 310-474-9111
 Facsimile: 310-474-8585
 E-mail: twolfson@ahdootwolfson.com
 rahdoot@ahdootwolfson.com

P. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a Legal Holiday (as defined in Fed. R. Civ. P. 6(a)(6)), or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days.

Q. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

R. The Class, Plaintiff, Class Counsel, Barbara's Bakery, or Barbara's Bakery's Counsel shall not be deemed to be the drafter of this Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter or otherwise resort to the *contra proferentem* canon of construction. All Parties agree that the Parties' counsel drafted this Agreement during and as a result of extensive arm's length negotiations. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Agreement was made or executed.

S. The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this document.

T. The Parties expressly acknowledge and agree that this Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence,

1 constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence
2 408 and any equivalent rule of evidence in any state. In no event shall this Agreement, any of its
3 provisions or any negotiations, statements, or court proceedings relating to its provisions in any way
4 be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action,
5 any other action, or in any judicial, administrative, regulatory, or other proceeding, except in a
6 proceeding to enforce this Agreement or the rights of the Parties or their counsel. Without limiting the
7 foregoing, neither this Agreement nor any related negotiations, statements, or court proceedings shall
8 be construed as, offered as, received as, used as or deemed to be evidence or an admission or
9 concession of any liability or wrongdoing whatsoever on the part of any person or entity, including,
10 but not limited to, the Released Parties, Plaintiff, or the Class, or as a waiver by the Released Parties,
11 Plaintiff, or the Class of any applicable privileges, claims, or defenses.

12 U. Plaintiff expressly affirms that the allegations contained in the complaints filed in the
13 Action were made in good faith and have a basis in fact, but considers it desirable for the Action to be
14 settled and dismissed because of the substantial benefits that the proposed Settlement will provide to
15 Class Members.

16 V. The Parties, their successors and assigns, and their counsel undertake to implement the
17 terms of this Agreement in good faith, and to use good faith in resolving any disputes that may arise in
18 the implementation of the terms of this Agreement.

19 W. The waiver by one party of any breach of this Agreement by another party shall not be
20 deemed a waiver of any prior or subsequent breach of this Agreement.

21 X. If one party to this Agreement considers another party to be in breach of its obligations
22 under this Agreement, that party must provide the breaching party with written notice of the alleged
23 breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any
24 rights under this Agreement.

25 Y. The Parties, their successors and assigns, and their counsel agree to cooperate fully with
26 one another in seeking Court approval of this Agreement and to use their best efforts to effect the
27 prompt consummation of this Agreement and the proposed Settlement.

1 Z. This Agreement may be signed with a facsimile signature and in counterparts, each of
2 which shall constitute a duplicate original.

3 Agreed to on the date indicated below.

4
5 APPROVED AND AGREED TO BY THE PLAINTIFF

6
7 BY _____ DATE _____
8 RICHARD W. TRAMMELL

9
10 APPROVED AND AGREED TO BY CLASS COUNSEL

11
12 BY _____ DATE _____
13 Tina Wolfson
14 AHDOOT & WOLFSON, PC

15
16 APPROVED AND AGREED TO BY AND ON BEHALF OF
17 BARBARA'S BAKERY, INC.

18 BY  DATE April 25, 2013
19 NAME: STEPHEN VAN TASSEL
20 TITLE: CEO

21 APPROVED AND AGREED TO BY BARBARA'S BAKERY'S COUNSEL

22
23 BY  DATE 4.25.13
24 Clement L. Glynn
25 GLYNN & FINLEY, LLP

1 Z. This Agreement may be signed with a facsimile signature and in counterparts, each of
2 which shall constitute a duplicate original.

3 Agreed to on the date indicated below.

4
5 APPROVED AND AGREED TO BY THE PLAINTIFF

6
7
8 BY


RICHARD W. TRAMMELL

DATE 24 Apr. 13

9
10 APPROVED AND AGREED TO BY CLASS COUNSEL

11
12 BY

Tina Wolfson
AHDoot & Wolfson, PC

DATE

13
14
15 APPROVED AND AGREED TO BY AND ON BEHALF OF
16 BARBARA'S BAKERY, INC.

17
18 BY

NAME:

19 TITLE:

DATE

20
21 APPROVED AND AGREED TO BY BARBARA'S BAKERY'S COUNSEL

22
23 BY

Clement L. Glynn
GLYNN & FINLEY, LLP

DATE

1 Z. This Agreement may be signed with a facsimile signature and in counterparts, each of
2 which shall constitute a duplicate original.

3 Agreed to on the date indicated below.

4
5 APPROVED AND AGREED TO BY THE PLAINTIFF

6
7 BY _____ DATE _____
8 RICHARD W. TRAMMELL

9
10 APPROVED AND AGREED TO BY CLASS COUNSEL

11
12 BY  DATE 4/25/13
13 Tina Wolfson
14 AHDOOT & WOLFSON, PC

15
16 APPROVED AND AGREED TO BY AND ON BEHALF OF
17 BARBARA'S BAKERY, INC.

18 BY _____ DATE _____
19 NAME:
20 TITLE:

21 APPROVED AND AGREED TO BY BARBARA'S BAKERY'S COUNSEL

22
23 BY _____ DATE _____
24 Clement L. Glynn
25 GLYNN & FINLEY, LLP